

# NCOIL

National Conference of Insurance Legislators

*...for the States*

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STATEMENT OF THE  
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

BEFORE THE  
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT  
SPONSORED ENTERPRISES  
COMMITTEE ON FINANCIAL SERVICES,  
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON  
"H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008"

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TUESDAY, JUNE 10, 2008

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THE HONORABLE BRIAN P. KENNEDY  
RHODE ISLAND HOUSE OF REPRESENTATIVES  
NCOIL PRESIDENT  
CHAIR, RHODE ISLAND HOUSE CORPORATIONS COMMITTEE

## **INTRODUCTION**

Good morning Chairman Kanjorski, Ranking Member Pryce, and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee on the very important subject of insurance regulatory reform.

I am Rhode Island State Representative Brian Kennedy and I chair our House Corporations Committee that has jurisdiction over insurance issues. I serve as President of the National Conference of Insurance Legislators' (NCOIL).

NCOIL is an organization of state legislators whose main area of public policy concern is insurance. NCOIL legislators chair or are members of the committees responsible for insurance legislation in their state houses. NCOIL states represent a large majority of the premium volume written in the U.S.

## **LACK OF A LEGISLATIVE PRESENCE**

When commenting on the structure, scope and potential impact of H.R. 5840, NCOIL finds it hard to close its eyes and ignore the lack of any state legislative presence in the Congressional bill. We must say that it is incongruous that state legislators—who have shaped by statute the innovative and financially robust insurance marketplace that exists today—are nonexistent in this proposal.

It is ironic that the burden of proof would lie on states to stave off preemption of the very laws that successfully steered the insurance sector through the pitfalls faced by many other financial services sectors. State laws regarding solvency have made the insurance arena more stable than the banking market, for instance, which—under federal regulation—was rocked by the savings and loan scandals of the 1990s and by the sub-prime lending crisis of today.

Federal initiatives have often fallen short of their goals due to their disconnect from consumers. ERISA has created a bifurcated system that ties the hands of state legislators trying to help desperate constituents. The Federal Emergency Management Agency (FEMA) has struggled to respond effectively to communities wracked by natural and other hazards. The National Flood Insurance Program (NFIP) has evolved into a debtor program that is challenged to meet the needs of modern homeowners.

## **NAIC ROLE**

While acknowledging that the NAIC is a repository for insurance information, NCOIL believes that giving such a primary role to the NAIC in the OII Advisory Group in effect allows “the tail to wag the dog.” Regulators, with their technical expertise, are authorized by legislators to interpret and enforce the statutes that we develop to regulate our respective insurance markets. In practice, H.R. 5840 would permit the NAIC and insurance regulators—via the Advisory Group—to weigh in on proposed federal international insurance agreements that would preempt the laws that we, as elected officials, write and that they, as appointed administrators, regulate—without the checks and balances provided by a legislative body.

We also find it unprecedented that such authority would be provided by the federal government to a private trade association, or to what immediate past NAIC President Walter Bell (AL) declared in an April 9, 2007, letter is **“a 501(c)(3) non-profit corporation with voluntary membership and [that] is not a state government entity.”** This president went on to say that **“When individual insurance commissioners gather as members of the NAIC, they are not considered a governmental entity or public body as defined by the various Open Meetings Laws, but rather are a private group. As an organization, the NAIC does not have any regulatory authority.”**

H.R. 5840 would authorize the OII to serve as a liaison between the Federal Government and the NAIC—but not the legislators, NCOIL, or any other national legislative organization—on national and international insurance issues, and would require that annual reports from the OII Director to Congressional Committees be completed “in consultation with” the NAIC. This is a dramatic enhancement of the authority for this non-governmental entity known as the NAIC, which comes at the expense of the state officials to whom they are accountable.

Like our federal counterparts, state lawmakers do not take ceding authority to an executive branch lightly. This is evidenced by Congress’ recent reaction to the Bush Administration’s August 17, 2007, directive regarding enrollment in the State Children’s Health Insurance Program (SCHIP). Congress did not appreciate when a regulatory agency overstepped its bounds, but in this case, Congress is expecting State legislators to, in effect, cede authority to a private trade group that currently has no regulatory authority.



## **SCOPE OF OII**

NCOIL questions the scope of public policy to be considered by an OII. As stated in the bill, H.R. 5840 would authorize the OII to collect, analyze, and advise on “major domestic and international insurance policy issues.” If the sponsors are not looking to lead to a more dangerous and duplicative regime, the legislation should clarify that the OII’s domestic role is limited to that of a database clearinghouse.

The word “advise” means “to recommend” and indicates that the duties of the OII may be broader than simply offering insurance-related data. Though it does not appear to be Congress’ intention, we fear that “mission creep” could occur at the OII as a future Director recommends a course of action that preempts strong state insurance laws. This could have dramatic, unfortunate implications for consumers and our constituents.

For instance, the bill lists catastrophe insurance as a particular area of OII interest. Catastrophe coverage is a deeply local, community-specific market that must be regulated at the state level. Local oversight and swift response is critical to consumers in need. H.R. 5840 also singles out financial guaranty insurance—a market that affects the bonding ability of our local governments and determines whether schools are upgraded, hospitals are built, and bridges are made safe, among other projects.

While the amended legislation defines a process for preempting state laws—and includes reasons why it might be wrong to do so—we remain concerned with the scope of the “international insurance matters” that could lead to preemption. These matters, which are not defined in the

discussion draft, may be broad enough to include areas such as accounting, life insurance reserving, or property issues that generally are regarded as domestic policy.

## **FUTURE OF INSURANCE REGULATION**

NCOIL is concerned that H.R. 5840 inadvertently could lay the foundation for ill-advised federal approaches to insurance regulation, such as an Office of National Insurance (ONI) and an Optional Federal Charter (OFC). We note that in your previous statements you have questioned the practicality of an OFC for all lines of insurance. While we recognize that H.R. 5840 says it should not be interpreted to authorize the federal regulation of insurance, we believe that the OII would establish a framework that a future Congress could build upon to create and empower a federal insurance regulator, contrary to your original legislative intent.

To use a sports analogy, we believe that establishing an OII and not expecting an OFC is like paving a field, erecting two basketball hoops, and asking people not to play. As the infamous line from *Field of Dreams* goes, “if you build it, they will come.”

OFC or ONI proposals would not take two steps forward, as proponents claim, but would take three steps back. They sacrifice important state protections in favor of untested federal bureaucracies that would cost more than advocates suggest. They have the potential to lead to a morass of state and federal directives, jeopardize state premium tax revenue, compromise guaranty funds and other market safety nets, negatively impact smaller companies, and ignore all that states have achieved to streamline their systems.

We also respectfully note that Congresswoman Melissa Bean (D-IL) and Congressman Edward Royce (R-CA), co-sponsors of your OII legislation and primary sponsors of H.R. 3200, the *National Insurance Act*, which would create an OFC, have publicly stated that H.R. 5840 would be a step toward creating an OFC.

Thus, OFC supporters eventually would argue that creating an OFC is not the unprecedented, landscape-changing effort that OFC opponents—NCOIL included—know that it would be. They would say that a foundation is already in place for a federal regulator and that all Congress really would need to do is expand the authorities already granted to the OII.

## **OPEN QUESTIONS**

Beyond concerns already discussed, NCOIL feels that H.R. 5840 leaves open questions regarding the responsibility for consumer protections and the enforcement of federal policy. Would the states remain central to consumer protection when their laws are preempted, or would they simply bear the brunt of consumer frustrations if/when consumers are harmed by a new federal agreement? Would states be left holding the bag regarding enforcement of federal policy? Would states realistically have the power under the notice-and-comment process to fight off ill-advised federal public policy recommendations?

## **STATE-BASED REGULATORY SUCCESSES**

As you know, NCOIL strongly supports the state-based system of insurance regulation. We believe that experienced state officials—who are closer in proximity to consumers than their federal colleagues—can more effectively regulate the insurance industry and better serve

constituents. Like you, we recognize that insurance regulation must be modernized in a few targeted areas, and we urge you to continue to allow states to be the “laboratories of democracy.” States are working—and will continue to work—to streamline regulation where appropriate, including in producer and company licensing, speed-to-market for insurance products, rate regulation, and market conduct surveillance and analysis.

The success of the Interstate Insurance Product Regulation Compact proves that states can effectively enact innovative reform. In a remarkably short period of time, the Compact came into being when it met its threshold of 26 states and/or 40 percent of premium volume in 2006. Legislators offered critical input during its development and today sit on a Legislative Committee that helps guide Compact efforts, much as we believe legislators should have a role in any insurance regulatory advisory group. The Compact is an independent mechanism of the states—not run by any regulatory or legislative organization—and is responsible to its now-31 member jurisdictions. The Compact addresses an important element of financial modernization, providing speed-to-market by providing one central filing point for life insurance, annuities, disability income, and long-term care insurance products.

## CONCLUSION

We appreciate the work of this Subcommittee to investigate the insurance regulatory environment and to provide interested stakeholders with an opportunity to comment on the proposed H.R. 5840, the *Insurance Information Act of 2008*.



NCOIL asks that you consider what states have already accomplished when moving forward with your deliberations. State legislators, with the assistance and advisement of our state insurance regulators, have created a vibrant insurance marketplace where companies are competitive and consumers, our mutual constituents and investors are protected in their daily transactions.

Thank you for the opportunity to address this Subcommittee, and I look forward to your questions.

# BRIAN PATRICK KENNEDY

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## Experience

*January 1989 – Present*

**State Representative – District 38**  
**Rhode Island General Assembly**  
328 State House, Providence, Rhode Island 02903

Elected to ten terms as a Member in the 75-person legislative body. Responsible for constituent services and the introduction and passage of legislation. Chairman of the House Committee on Corporations which is responsible for the consideration of all legislation affecting the mortgage and banking industry, professional regulations, business and economic development, securities and all aspects of insurance.

*June 1986 – Present*

**Real Estate Appraiser and Broker**  
**Kennedy Realty & Appraisal**  
P.O. Box 1001, Ashaway, Rhode Island 02804-0018

Independent state certified fee appraiser employed by various financial service institutions to establish market value on select properties for resale, new construction and the refinancing of mortgage instruments. Licensed Real Estate Broker

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## Education

*February 1985 – May 1987*

**Anna Maria College**, Paxton, MA 01612  
Master of Business Administration (M.B.A.), Executive Program

*September 1979 – May 1983*

**Providence College**, Providence, RI 02918  
Bachelor of Arts in History and General Social Studies (double major). Dean's List student. Vice President of the Class of '83 from 1979-1980.

1989 – 1991

**Community College of Rhode Island**, Westerly, RI and  
**New England Institute of Technology**, Warwick, RI -  
Adjunct Faculty Member, Business Courses.

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## **Community Service**

**The Westerly Hospital**, Westerly, RI - Board of  
Incorporators

**Rhode Island Academic Decathlon**, Warwick, RI – Board  
of Directors

**Cox Charitable Foundation**, West Warwick, RI – Board  
of Directors

**Ashaway Fire District**, Ashaway, RI – Tax Collector and  
Tax Assessor for five years

**Employer Support of the Guard and Reserve**, Rhode  
Island affiliate member

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## **Professional Affiliations**

**National Conference of Insurance Legislators (NCOIL)**  
**President**  
Albany, NY

**Insurance Legislator's Foundation (ILF)**  
**President**  
Albany, NY

**National Conference of State Legislators (NCSL)**,  
**Vice Chairman** – Telecommunications, Financial Services  
and Interstate Commerce Committee  
Washington, D.C.

**Council of State Governments (CSG)**, Lexington, KY

**CSG-Eastern Regional Conference**, New York City, NY

**Rhode Island Association of Realtors**, Warwick, RI

**National Association of Realtors**, Chicago, IL

**Coalition Against Insurance Fraud**, Washington, D.C.  
Executive Committee Member